

PUBLIC LAW BOARD NO. 6302

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

STATEMENT OF CLAIM:

- ### FINDINGS:

Employees absenting themselves from their assignments for five (5) consecutive working days without proper authority shall be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained.

The record reflects that from June 6 - June 26, 2005, Claimant was serving a sentence of incarceration for driving under the influence of alcohol. Claimant was approved to use vacation time for June 3 - 20, 2005. His Rule 48(k) termination of seniority was for absences beginning June 21, 2005.

Of particular significance is Claimant's absence on June 21, 2005. Claimant maintained that prior to his incarceration, he spoke with his manager and requested a leave of absence, was advised that he could not receive a leave of absence for serving a jail sentence and then requested and was granted a personal day for June 21. Carrier's records did not reflect a personal day for June 21.

Incarceration is not a valid reason for taking a personal day. However, there does appear to be confusion as to whether Claimant believed that he had an approved absence on June 21. Under the circumstances, and in accordance with prior precedent, *see, e.g.*, Public Law Board 6302, Case No. 21, Award No. 24, we find that it is appropriate to temper the harshness of a literal application of Rule 48(k) and award that Claimant be reinstated to service with seniority unimpaired but without compensation for time out of service. Claimant's reinstatement is conditioned on Claimant, within two weeks of being notified of his reinstatement, contacting Carrier's Employee Assistance Program, complying with all requirements imposed on Claimant by the EAP and complying with any reasonable requests by Carrier to document his compliance.

AWARD

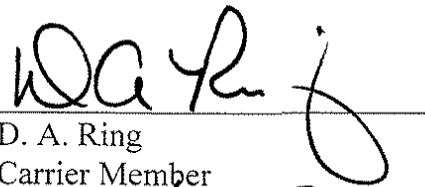
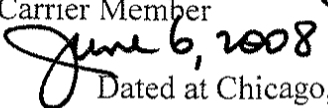

Claim sustained in accordance with the Findings.

ORDER

The Board having determined that an award favorable to Claimant be issued, Carrier is ordered to implement the award within thirty days from the date two members affix their signatures hereto



Martin H. Malin, Chairman


D. A. Ring
Carrier Member

Dated at Chicago, Illinois, May 31, 2008
T. W. Kreke, Employee Member
Employee Member